

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEIALOHA W. GAINES and DEPARTMENT OF THE NAVY,
Santa Ana, Calif.

*Docket No. 96-1949; Submitted on the Record;
Issued May 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On February 22, 1995 appellant, then a 48-year-old supply clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she experienced "anxiety exacerbating hypertension" causally related to factors of her federal employment.

In statements accompanying her claim, appellant primarily attributed her emotional condition to the following: harassment and verbal abuse by Ms. Mary Jackson, her supervisor; poor management by Ms. Jackson, inadequate training; problems with leave requests; complying with requests from the Office of Workers' Compensation Programs for information regarding her compensation claim; and additional work duties.

By decision dated March 5, 1996, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable employment factors.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-

¹ 5 U.S.C. §§ 8101-8193.

force or frustration from not being permitted to work in a particular environment to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates the factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Appellant alleged that she experienced stress due to harassment by Ms. Jackson, her supervisor. Appellant related that on December 14, 1993 Ms. Jackson became upset when appellant asked others for assistance instead of her and chastised her in front of coworkers. Appellant further related that Ms. Jackson would yank folders out of her hand and yelled at her on January 26, 1995.

With regard to her allegations of harassment by her supervisor, the Board notes that to the extent that disputes and incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.⁷ However, for harassment to give rise to a compensable factor of employment, there must be evidence that the implicated acts did, in fact, occur as alleged. Mere perceptions of harassment are not compensation under the Act.⁸ In the instant case, Ms. Jackson denied yelling at or belittling appellant and the record further contains statements from appellant's coworkers indicating that Ms. Jackson did not act in an abusive

² See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *Ruth C. Borden*, 43 ECAB 146 (1991).

manner toward any employee. Thus, as appellant has not provided any corroborating evidence that the alleged harassment did, in fact, occur she has not established a compensable employment factor.

Appellant further maintains that she experienced stress due to Ms. Jackson's poor management skills, lack of subject knowledge, micromanagement techniques, and failure to hold staff meetings. An employee's complaints concerning the manner in which a supervisor performs her duties as a supervisor or the manner in which a supervisor exercises her supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act, absent evidence that the supervisor acted unreasonably in the administration of a personnel matter.⁹ Appellant did not submit any evidence to substantiate that her supervisor acted unreasonably in the performance of her duties and thus appellant has not met her burden of proof to establish a compensation factor of employment.

Regarding appellant's contention that she received inadequate training for her position, the Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the refusal constitutes error or abuse.¹⁰ In the instant case, the employing establishment maintains that appellant received adequate training for her position. Appellant has not submitted any evidence which would establish error or abuse on behalf of the employing establishment in failing to grant her request for additional training.

Appellant next contends that the employing establishment retaliated against her by rating her 1995 performance appraisal two levels lower than her 1994 performance appraisal. However, the Board has held that reactions to the assessment of performance are not covered by the Act.¹¹

Appellant also alleged that she was required to perform duties outside those in her position description. Appellant related that she believed that her job required her only to pay invoices and not to check to see if contracts were complete or make inquiries regarding contract modification. In a statement dated September 11, 1995, appellant's supervisor contradicted her assertion and indicated that appellant had a very narrow definition of her job requirements. The employing establishment further submitted a copy of the position description for a supply clerk which included verifying the accuracy of contracts and clarifying contract terms as a part of the job requirements. In a statement dated August 30, 1995, Ms. Teodora Ferguson, who initially trained appellant for her current position, related that she instructed her to "follow-up on accounts" as well as compare the invoice with the information on the contract. Appellant, thus, has not established her allegation as factual.

Appellant further maintained that the employing establishment acted improperly in regard to her leave usage. Allegations regarding the usage or denial of leave are not directly

⁹ *Abe E. Scott*, 45 ECAB 164 (1993).

¹⁰ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹¹ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

related to appellant's regular or specially assigned duties, but rather pertain to administrative or personnel matters and are not compensable absent evidence which establishes error or abuse on behalf of the employing establishment.¹² As appellant did not submit any evidence to substantiate a finding of error or abuse by the employing establishment regarding the alleged leave issues, the Office properly found that these allegations did not constitute compensable factors of employment.

Appellant further attributed her stress, in part, to responding to the Office's requests for further information on her claim. The Board has held, however, that matters involving the processing of a workers' compensation claim by the employing establishment or Office are, generally, not employment factors under the Act as they bear no relation to appellant's day-to-day or specially assigned duties.¹³

Regarding appellant's allegation that she was overworked, the Board has previously recognized that claims of overwork do relate directly to the performance of regular or specially assigned duties and may give rise to a compensable factor of employment.¹⁴ However, as with all allegations, overwork must be established on a factual basis. In the instant case, appellant maintained that she was overworked in her position because when she was moved to a temporary assignment the employing establishment assigned two people to her desk as replacements. Appellant further contends that her work load increased in January 1995 due to a change in the method of processing invoices. Appellant also indicated that her work load increased in July 1995 due to the implementation of a new pay system. The record contains statements from Mr. Reuel Mamaril and Mr. Martin Malasique, the two employees who temporarily replaced appellant in her position. Mr. Mamaril stated that he believed that the job required two people. Mr. Malasique also indicated that when he was assigned to appellant's desk in February 1995 he was unable to keep up with the work load and requested assistance. Mr. Malasique further noted, however, that both he and Mr. Mamaril effectively worked at appellant's desk part time due to their military duties. Appellant's supervisor, Ms. Jackson, stated that together Mr. Mamaril and Mr. Malasique were the equivalent of one full-time employee due to the time they spent fulfilling their military commitments. Ms. Jackson further contradicted appellant's assertion that the method of conducting inventory substantially changed in January 1995, noting that while appellant now had to provide copies of any contract modification this did not significantly increase her work load. She also stated that the pay system implemented in July 1995 actually reduced paperwork and make the work easier. Ms. Jackson further related that she provided appellant assistance at various time in 1994 and 1995 at appellant's request but maintained that appellant's job had for the past ten years been designated for only one person and that the work load for the position had decreased over the years.

In the instant case, appellant has not established that the work activity required in her position exceeded the normal established requirement within a specific time period. In addition, appellant did not submit any medical opinion evidence which specifically implicated overwork

¹² *Kathleen D. Walker*, 42 ECAB 603 (1991).

¹³ *George A. Ross*, 43 ECAB 346 (1991); *Thomas J. Costello*, 43 ECAB 951 (1992).

¹⁴ *William P. George*, 43 ECAB 1159 (1992).

as a cause of her emotional condition. In a report dated July 7, 1995, Dr. Dennis Greenberg, a clinical psychologist, related that appellant described, as the cause of her condition, problems with her supervisor. In a report dated October 4, 1995, Dr. J. Thukkar diagnosed depression and noted that appellant reported conflicts with her supervisor. As previously indicated, the preponderance of the evidence does not substantiate that appellant's supervisor harassed appellant or abused her position as a manager. None of the medical evidence of record addresses the issue of whether appellant's emotional condition was related to stress from overwork. For the foregoing reasons, appellant has not established that her emotional condition is related to an established compensable factor of employment.

The decision of the Office of Workers' Compensation Programs dated March 5, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 22, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member